

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

FOCAL COMMUNICATIONS	)	
CORPORATION OF WASHINGTON,	)	
	)	Docket No. UT-
Petitioner,	)	
	)	PETITION FOR ENFORCEMENT
v.	)	OF SECTION 252(i)
	)	
VERIZON NORTHWEST INC.,	)	
	)	
Respondent.	)	
_____	)	

Pursuant to the Commission's Interpretive and Policy Statement in Docket No. UT-990355 and WAC 480-120-530, Focal Communications Corporation of Washington ("Focal") brings the following Petition for Enforcement of Section 252(i) against Verizon Northwest Inc. ("Verizon"). In support of its Petition, Focal alleges as follows:

**PARTIES**

1.     Petitioner. Focal is a telecommunications company that has been registered and classified by the Commission as a competitive telecommunications company. Focal is authorized to provide switched and non-switched local exchange and long distance services in Washington.

2.     Respondent. Verizon is an incumbent local exchange company ("ILEC"), as defined in 47 U.S.C. § 251(h) and provides local exchange and other telecommunications services throughout the State of Washington.

## **JURISDICTION**

3. Commission Jurisdiction. The Commission has jurisdiction over this Petition and Respondent Verizon pursuant to 47 U.S.C. §§ 251-52, RCW 80.36.610, and WAC 480-09-530.

## **BACKGROUND**

4. Lack of Current Interconnection Agreement. Focal opted-in to the interconnection agreement between Verizon and AT&T Communications of the Pacific Northwest, Inc. Verizon, however, terminated that agreement as of its September 24, 2000, expiration date. The parties maintain the services and facilities in existence as of that date under the terms and conditions of the expired agreement, but Verizon will not accept new orders from Focal pursuant to that agreement. Accordingly, Focal currently does not have an effective interconnection agreement with Verizon in Washington.

5. Bell Atlantic/GTE Merger Conditions. Among the conditions on FCC approval of the merger between Bell Atlantic and GTE (“*Merger Conditions*”) was the requirement that Verizon permit requesting telecommunications carriers in one state to opt-in to any interconnection agreement from another state to the same extent and under the same rules that would apply to a request under 47 U.S.C. § 252(i). *In re GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations*, CC Docket No. 98-184, FCC 00-221, Memorandum Opinion and Order, Appendix D, ¶ 32 (June 16, 2000) (“*Bell Atlantic/GTE Merger Order*”). The applicable section of the *Merger Conditions* is attached as Exhibit A.

6. Section 252(i) Request. By letter dated October 4, 2000, Focal requested to opt-in

to the terms and conditions contained in the interconnection agreement between GTE South Incorporated and Time Warner Telecom in North Carolina (“Time Warner Agreement”) for use in the state of Washington, as required by the *Bell Atlantic/GTE Merger Order* and Section 252(i). A copy of the letter is attached as Exhibit B, and a copy of the Time Warner Agreement is attached as Exhibit C. Verizon refused Focal’s request, claiming that Verizon is not obligated to make all provisions from the Time Warner Agreement available to requesting carriers in other states.

7. FCC Proceedings. On November 9, 2000, Focal submitted a letter to the FCC Common Carrier Bureau requesting an interpretation of the most-favored nation (“MFN”) provisions in the *Bell Atlantic/GTE Merger Order*. Specifically, Focal requested that the FCC clarify that Verizon may not refuse to permit a requesting carrier to opt-in to an agreement because that agreement includes reciprocal compensation and other provisions governed by sections of the Telecommunications Act of 1996 (“Act”) other than Section 252(c). In its December 6, 2000, letter in response to Focal’s request, Verizon contended that its obligation to provide terms and conditions from an agreement in one state to a carrier in another state is limited to interconnection arrangements and unbundled network elements subject to Section 251(c) and excludes reciprocal compensation and any obligations under other provisions of the Act.

8. FCC Decision. In a letter ruling dated December 22, 2000, the FCC rejected Verizon’s interpretation of the *Bell Atlantic/GTE Merger Order*. The FCC reiterated that “the *Merger Conditions* expressly state that the rules and requirements of section 252(i) apply to all

requests for interconnection arrangements and UNEs under the MFN provisions of the *Merger Conditions*. The MFN provisions expand the section 252(i) opt-in rights of CLECs by allowing CLECs to import interconnection arrangements (including entire agreements) from one state into another state, thereby reducing the time and expense of negotiating interconnection agreements.” CC Docket No. 98-184, DA 00-2890, Letter from Common Carrier Bureau at 3 (Dec. 22, 2000) (“Letter Ruling”). The Letter Ruling further provides that, at a minimum, Verizon must permit the CLEC to opt-in to all undisputed provisions of an interconnection agreement and must “raise its views regarding the contested provision before the state commission instead of unilaterally limiting a CLEC’s options under the MFN provisions.” *Id.* A copy of the Letter Ruling is attached as Exhibit D.

9. Repeated Request. Following the issuance of the Letter Ruling, Focal repeated its request to opt-in to the Time Warner Agreement in Washington. Verizon responded by letters dated January 11, 2001. Those letters ignore the Letter Ruling and reiterate Verizon’s insistence that Focal accept additional “Verizon South Terms,” including the restriction that “provisions from the Time Warner Telecom/Verizon South agreement that are not required pursuant to Section 251(c) of the Act shall not apply to Focal’s adoption of the Verizon South Terms in the State of Washington.” Verizon refuses to permit Focal to opt-in to the Time Warner Agreement in Washington unless Focal agrees to the Verizon South Terms and executes a “Supplemental Agreement” that substantially revises the terms and conditions contained in the Time Warner Agreement. A copy of the January 11, 2001 letters and Verizon’s proposed Supplemental Agreement are attached as Exhibit E.

10. Verizon Final Offer. Focal contacted Verizon after receiving Verizon’s proposal and again requested that Verizon comply with the Letter Ruling, the *Merger Conditions*, and Section 252(i) and permit Focal to opt-in to the Time Warner Agreement without revisions other than Washington-specific pricing and Focal-specific contact information. Verizon refused, stating that its January 11, 2001 proposal represents Verizon’s final offer to Focal.

#### **VERIZON VIOLATION OF SECTION 252(i)**

11. Section 252(i). The Act requires Verizon to “make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier *upon the same terms and conditions as those provided in the agreement.*” 47 U.S.C. § 252(i) (emphasis added).

12. Merger Conditions. The *Bell Atlantic/GTE Merger Order* requires Verizon to “allow requesting telecommunications carriers in one state to opt-in to any interconnection arrangement or unbundled network element contained in an interconnection agreement from another state,” including an entire interconnection agreement. Letter Ruling at 2. The FCC subsequently stated that “Verizon is incorrect in asserting that the reference to section 251(c) limits a CLEC’s opt-in rights under the MFN provisions of the *Merger Conditions.*” *Id.* The FCC clarified, “The phrase ‘interconnection agreement (including an entire agreement) subject to section 251(c)’ in the *Merger Conditions* merely refers to the type of agreement that is subject to this provision, namely, an interconnection agreement addressing the duties set forth in subsections 251(b) and 251(c).” *Id.* at 3.

13. Commission Statement. Principle 2 in the Commission’s Interpretive and Policy

Statement provides, “Except for changes in the names of the parties, internal references, or other minor changes, a requesting carrier that requests an existing agreement in its entirety, or to receive individual arrangements in an agreement, must adopt the original contract language verbatim.” *In re Implementation of Section 252(i) of the Telecommunications Act of 1996*, Docket No. UT-990355, Interpretive and Policy Statement (First Revision) ¶ 14 (April 12, 2000).

14. Verizon Violations. Verizon’s refusal to permit Focal to opt-in to the Time Warner Agreement is inconsistent with Section 252(i), the *Merger Conditions* in the FCC’s *Bell Atlantic/GTE Merger Order*, and the Commission’s Interpretive and Policy Statement. Federal and Washington law requires Verizon to make the Time Warner Agreement available to any requesting carrier in Washington in its entirety and verbatim, without substantive revision or amendment. Verizon is violating state and federal law by refusing to make the Time Warner Agreement available in Washington unless Focal accepts additional terms and conditions and executes a substantial amendment to that agreement.

#### **PRAYER FOR RELIEF**

WHEREFORE, Focal prays for the following relief:

A. An order from the Commission requiring that Verizon comply with Section 252(i), the *Merger Conditions* in the *Bell Atlantic/GTE Merger Order*, and the Commission’s Interpretive and Policy Statement; specifically, an order requiring that Verizon permit Focal to opt-in to the Time Warner Agreement without revision, modification, or amendment except as follows:

- (1) Substitution of interim or permanent rates established by the Commission

for access to, and interconnection with, Verizon's network in Washington;

and

- (2) Changes in the names of, and contact information for, the parties, the Commission, and the state; and

B. Such other or further relief as the Commission finds just and reasonable.

DATED this 21st day of March, 2001.

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of Washington

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